

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4391 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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N.M. PATEL

Versus

STATE OF GUJARAT & ANR.

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Appearance:

Mr. D.V. Mehta for Petitioner

Mr. N.N. Pandya for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/08/96

#### ORAL JUDGMENT

The petitioner, an employee of the accounts and treasury department, filed this Special Civil Application before this Court against the decision of the Gujarat Civil Services Tribunal in appeal No.435 of 1982 dated 16th May 1984, by which penalty of withholding of three grade increments with future effect which has been given to him by the disciplinary authority, was reduced to withholding three increments without future effect.

Another grievance has been made that the respondent No.2 has not implemented the order of the Government passed in his favour under which his period of absence was regularized.

2. The petitioner was served with a chargesheet vide memo dated 10.4.1981. As many as three charges were there against the petitioner. After holding inquiry, the petitioner was given penalty of withholding of three grade increments with future effect under the order dated 27th July 1982. After the order of penalty has been made, the period of absence of the petitioner has to be regularized otherwise it would have been break in service and accordingly under the order dated 29th October 1983, the respondent No.1 has regularized the said period of absence. It is necessary to mention here that one of the charges against the petitioner was of wilful absence from his duties. As the petitioner has taken up the matter against the order of penalty given to him by the disciplinary authority, to the Tribunal, the respondent No.1, under its order dated 13th February 1984, ordered to keep the earlier order dated 29th October 1983 in abeyance. After decision of the appeal by the Tribunal, the respondent No.1, under its order dated 7.7.1984, has withdrawn the order dated 13th February 1984 and direction was issued to respondent No.2 to implement the order dated 29th October 1983.

3. The learned counsel for the petitioner made twofold submissions. Firstly, he contended that the action of respondent No.2 not to implement the order dated 29th October 1983 is wholly arbitrary and unjustified. The learned counsel for the petitioner further contended that when the period of absence was regularized under the order dated 29th October 1983, there was no justification to give any penalty to the petitioner. The counsel for the petitioner has not challenged the departmental inquiry proceedings as well as the order passed by the Tribunal on any other ground whatsoever. On the other hand, the counsel for the respondent has supported the order of the Tribunal.

4. A reply to this Special Civil Application has been filed wherein nothing has been stated by respondents against the action of respondent No.2 not to implement the order dated 29th October 1983. I have given my thoughtful consideration to the submissions made by learned counsel for the parties.

5. The first contention made by learned counsel for the petitioner deserves acceptance. In para-8 of the

reply, the respondent has come up with the case that under the order dated 29th October 1983 made by respondent No.1 herein, the petitioner's unauthorised absence has been regularized by adjusting the same against the leave due. It has further been stated that the period for which there was no leave due to the petitioner, the same has been treated as extra ordinary leave or leave without pay. The most important statement made in the reply is that those orders have been made in accordance with the Rules made in that behalf. When the respondent has admitted that the order dated 29th October 1983 has been made in accordance with Rules made in that behalf, I fail to see any justification in the action of respondent No.2 not to implement that order. The respondent No.1, under its order dated 7.7.84 cancelled the earlier order dated 13th February 1984 and as such whatever embargo was there to implement the order dated 20th October 1983 in the way of respondent No.2 has come to an end. The respondent No.1 has clearly given out under the order dated 7.7.84 that the order dated 29th October 1983 has to be complied with. Though the respondents have admitted in the reply that the order dated 20th October 1983 has been passed in accordance with the Rules, but instead of complying with the said order, prayer has been made in reply for dismissal of this Special Civil Application. The prayer if read as made in the reply alongwith the averments made and reproduced above, then there are two contradictory statements come out. The learned counsel for the respondents is unable to give any reply to the first contention of the counsel for the petitioner. Therefore the prayer made by the petition in para-19(A) & (C) deserves acceptance.

6. So far as second contention of counsel for the petitioner is concerned, I do not find any substance therein. The order dated 29th October 1983 has been made for regularization of period of unauthorised absence not only after he was chargesheeted, but when the disciplinary proceedings have been finally concluded against the petitioner on 22.7.1982. The petitioner was given penalty of withholding of three grade increments with future effects, meaning thereby he was retained in the service. In the case of penalty of dismissal given to the petitioner, there would not have been any necessity for passing any order for regularization of period of absence but when the petitioner has been retained in service by giving him lesser penalty, the period of absence has to be regularized. In the order dated 29th October 1983, the period of unauthorised absence has been regularized and by the regularization,

it cannot be said that the petitioner has been exonerated of his charges of remaining absent unauthorisedly. This contention of learned counsel for the petitioner that the period of unauthorised absence, merely because it has been regularized, stands wiped of, is not accepted. The Tribunal has not committed any error whatsoever in passing of the order impugned in this Special Civil Application. The Tribunal has taken a lenient view in the matter and interfered with the quantum of punishment. Otherwise also, this contention is of no help to the petitioner. There were three charges against the petitioner and not only one, the charge of unauthorised absence. The second contention of the learned counsel for the petitioner may have some relevance to the charge of unauthorised absence and not to the other charges. Taking into consideration all these facts, the second contention of the learned counsel for the petitioner is devoid of any substance.

7. In the result, this Special Civil Application is allowed in part. The order of the Tribunal impugned in this Special Civil Application is maintained. However, the respondent No.2 is directed to comply with the order of respondent No.1 dated 29th October 1983, annexure 'E', and to give all the consequential benefits following therefrom, to the petitioner. Necessary compliance of the said order of respondent No.1 may be made by respondent No.2, within a period of four months from the date of receipt of certified copy of this order. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)